

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

**KIRBY RODRIGUEZ and
PATRICA RODRIGUEZ, his wife**

Plaintiffs,

v.

OSHKOSH CORPORATION, et al.,

Defendants.

Case No. 3:23-cv-00195-SPM

ORDER OF REMAND

This is a personal injury action seeking damages as a result of a foreseeable asbestos-induced disease.

On October 28 2022, plaintiffs Kirby (“Kirby”) and Patrica (“Patrica”) Rodriguez filed suit against defendants in the Twentieth Judicial Circuit Court in St. Clair County, Illinois, *to wit*: 22LA0923 (Doc. 1). On December 5, 2022, an amended complaint was filed (Doc. 3). On December 23, 2022, defendant Oshkosh Corporation (“Oshkosh”) received Kirby’s discovery responses and also attended his deposition on January 10, 2023 wherein Oshkosh learned of its government-contractor defense (Doc. 1). Accordingly, on January 23, 2023, Oshkosh filed a timely Notice of Removal to this Court based upon federal-officer jurisdiction pursuant to 28 U.S.C. § 1442(a)(1) and 1446 (*Id*). On January 25, 2023, defendant Hyster-Yale Group, Inc. filed a notice of joinder in the removal (Doc. 13)

On February 22, 2023, plaintiffs sought to dismiss OshKosh Corporation and Hyster-Yale Group Inc. (“HYG”) *with* prejudice and also filed a Motion to Remand (Docs. 32, 33). Plaintiffs contend that this Court would no longer have jurisdiction

without Oskkosh and HYG as defendants (*Id.*). As such, they request that the Court remand the case to the Twentieth Judicial Circuit Court.

Upon receipt of the Motion to Remand, this Court advised the parties that any responses/objections to remand shall be filed on or before March 27, 2023 (Doc. 34). As of today's date, March 29, 2023, no responses have been received.

If it appears to the Court at any time before final judgment that it lacks jurisdiction, it must remand the case. 28 U.S.C. § 1447. The Court construes the failure to respond to motion as an admission of the Motion's merits. See SDIL-LR 7.1(g).

Accordingly, the Court **GRANTS** Plaintiff's Motion to Remand and **REMANDS** this case to the Twentieth Judicial Circuit Court in St. Clair County, Illinois for further proceedings.

IT IS SO ORDERED.

DATED: March 29, 2023

/s/ Stephen P. McGlynn
STEPHEN P. McGLYNN
U.S. District Judge

